

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

2013 NOV 27 P 1:44

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

MEDINA BENITEZ, Senia,

and

MADRID RODRIGUEZ, Jenny,

Plaintiffs,

v.

KIM, Yung Hee

t/a Uptown Café
6400 Arlington Blvd. #103
Falls Church, VA 22042

~~ALSO SERVE AT: 9750 Hatmark Ct.
Vienna, VA 22181~~

and

KIM, Ki H.

t/a Uptown Café
6400 Arlington Blvd. #103
Falls Church, VA 22042

~~ALSO SERVE AT: 13869 Laura Ratliff Ct.
Centreville, VA 20121~~

Defendants.

Civ. No: 1:13 CV 1462

TSE/TCB

COMPLAINT

Preliminary Statement

1. Plaintiffs Senia Medina Benitez and Jenny Madrid Rodriguez sue their employers for failure to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

Jurisdiction over plaintiffs' claim lies in this court pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

Parties

2. Plaintiff Senia Medina Benitez ("Ms. Medina") is an adult resident of Fairfax County. She worked for defendants as a short-order cook and dishwasher.

3. Plaintiff Jenny Madrid Rodriguez ("Ms. Madrid") is an adult resident of Fairfax County. She worked for defendants as a short-order cook and dishwasher.

4. Defendant Yung Hee Kim ("Ms. Kim") is an adult resident of Fairfax County. Together with defendant Ki H. Kim ("Mr. Kim"), they are, on information and belief, the sole owners and operators of the Uptown Café located at 6400 Arlington Boulevard, #103, Falls Church, VA 22042, in Fairfax County.

5. Defendant Ki H. Kim ("Mr. Kim") is an adult resident of Fairfax County. Together with defendant Yung Hee Kim ("Ms. Kim"), they are, on information and belief, the sole owners and operators of the Uptown Café located at 6400 Arlington Boulevard, #103, Falls Church, VA 22042, in Fairfax County.

FACTS

6. Defendants are, and at all times relevant to this action were, the sole owners and operators of an unincorporated café in Falls Church called Uptown Café. Both were jointly responsible for all aspects of the café's day-to-day functioning, including but not limited to instructing hiring and firing employees, setting employees' hours and compensation, keeping

track of employees' hours, paying employees for their hours worked, and instructing employees on a day-to-day and hour-to-hour basis what to do.

7. On information and belief, defendants' gross annual business volume exceeded \$500,000 at all times relevant to this action.

8. *Plaintiff Senia Medina Benitez.* Ms. Medina worked as a short-order cook and dishwasher at Uptown Café from about May 2011 to about May 2012, and then again from about September 2012 through about September 2013. Her job duties included prep cooking, taking orders at the counter, cooking orders, plating eat-in orders and packing to-go orders, washing pots and dishes, and general cleaning of the café. In the performance of her job, she regularly prepared food using ingredients that had traveled in interstate commerce.

9. Ms. Medina generally worked 50 hours per week during her first year in the defendants' employ, and 45 hours per week during her second year in the defendants' employ. Defendants compensated Ms. Medina at a flat weekly rate of \$350 per week for her first six months, \$450 per week during her second six months, and \$550 per week during her last year in the defendants' employ.

10. At all relevant times, defendants failed to pay Ms. Medina time-and-a-half for overtime hours (defined as hours worked in a week beyond 40, *see* 29 U.S.C. § 207(a)(2)(C)).

11. *Plaintiff Jenny Madrid Rodriguez.* Ms. Madrid worked as a short-order cook and dishwasher at Uptown Café from about February 2012 to about September 2012. Her job duties included prep cooking, taking orders at the counter, cooking orders, plating eat-in orders and packing to-go orders, washing pots and dishes, and general cleaning of the café. In the performance of her job, she regularly prepared food using ingredients that had traveled in interstate commerce.

12. Ms. Madrid generally worked for the defendants 45 hours per week. Defendants compensated Ms. Madrid at a flat weekly rate of \$475 per week, of which they paid \$400 in check (subject to withholding) and \$75 in cash (with no withholding).

13. At all relevant times, defendants failed to pay Ms. Madrid time-and-a-half for overtime hours (defined as hours worked in a week beyond 40, *see* 29 U.S.C. § 207(a)(2)(C)).

14. As a result of a previous wage-and-hour complaint against the defendants in late 2011, the defendants required both Ms. Medina and Ms. Madrid to execute falsified timecards, which incorrectly stated that they left work at 4:30 (in fact the café closed at 4:30, but because the plaintiffs had to clean the café after it closed, they regularly left work at 5:00pm); and incorrectly stated that the plaintiffs were given a half-hour break for breakfast and another half-hour break for lunch (in fact the plaintiffs were not given a breakfast break at all, and their lunch break was usually only a few minutes). The defendants required the plaintiffs to execute these falsified timecards as a condition of their continued employment at the café.

CAUSE OF ACTION:
Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

15. At all times relevant to this action:

- a. Plaintiffs were employees of defendants within the meaning of 29 U.S.C. § 203(e)(1);
 - b. Defendants were employers of plaintiffs within the meaning of 29 U.S.C. § 203(d);
 - c. Defendants employed plaintiffs within the meaning of 29 U.S.C. § 203(g);
- and

d. Plaintiffs were engaged in commerce, and/or were employed by defendants in an enterprise engaged in commerce.

16. By failing to pay plaintiff Senia Medina Benitez at least \$7.25 per hour not including overtime premiums, defendants violated the minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. § 206, to Ms. Medina's injury, and are jointly and severally liable to her in damages. These violations were willful violations within the meaning of the FLSA, 29 U.S.C. § 255(a), in that defendants made no effort whatsoever to pay Ms. Medina the proper minimum wage notwithstanding the fact that she was plainly and obviously earning less than \$7.25 per hour not including overtime premiums.

17. By failing to pay plaintiffs their lawful time-and-a-half overtime premiums, defendants violated the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 207, to plaintiffs' injury, and are jointly and severally liable to them in damages. These violations were willful violations within the meaning of the FLSA, 29 U.S.C. § 255(a), in that defendants made no effort whatsoever to pay plaintiffs the proper overtime premium notwithstanding the fact that they were plainly and obviously working overtime.

Requested Relief

Wherefore, plaintiffs Senia Medina Benitez and Jenny Madrid Rodriguez respectfully request that this court provide the following relief:

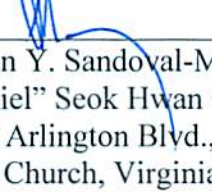
1. A declaration that the defendants' actions willfully violated the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 207, such that a three-year statute of limitations is appropriate;

2. An award of plaintiffs' actual damages under the FLSA in the amount of all unpaid minimum wages and overtime, jointly and severally against both defendants, in an amount appropriate to the proof at trial, but currently estimated to be about \$11,000 for Ms. Medina and about \$2,200 for Ms. Madrid;
3. An additional equal amount as liquidated damages, jointly and severally against both defendants, pursuant to 29 U.S.C. § 216(b);
4. An award of plaintiffs' costs and reasonable attorney's fees, as appropriate under the Fair Labor Standards Act, 29 U.S.C. § 216(b), jointly and severally against both defendants; and
5. Such other and further relief as this court deems necessary and proper.

Plaintiffs demand trial by jury.

Respectfully submitted,

LEGAL AID JUSTICE CENTER

By: 
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Date: November 27, 2013